IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No. 292 of 2000.

Date of decision August 17, 2007.

Sh. Vidya Dutt and others …**Appellants.**

Versus

Himachal Pradesh Financial Corporation ….**Respondent.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellants: **Mr. Sandeep Kaushik, Advocate, with Mr. Anil Chauhan, Advocate.**

For the Respondents: **Mr. Bimal Gupta, Advocate.**

Dev Darshan Sud, J. (Oral).

This is the plaintiffs appeal against the judgment and decree of the learned District Judge dismissing their suit for recovery of Rs.3,38,000/-; comprising of Rs.1,24,227/- as principal, Rs.95,000/- as costs of furniture and machinery and Rs.1,18,800/- as interest. It is averred that the plaintiffs entered into an agreement with Shri Lachhman Singh, the proprietor of M/S Amit Industries for the purchase of factory being run under the name and style of M/S Amit

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

Industries for a consideration of Rs.7,31,000/-. The plaintiffs averred that a sum of Rs.72,000/- was paid by bank draft on 29.3.1994 against the instalment of loan due from Amit Industries to the respondent – Himachal Pradesh Financial Corporation. It is undisputed before me that Amit Industries was the loanee. Plaintiffs averred that M/S Amit Industries had defaulted in depositing the instalments of loan to the extent of Rs.1,19,305/- as on 10.4.1994. The defendant exercising its statutory powers under Section 29 of the State Financial Corporations Act, 1951 had issued a notice to Amit Industries calling upon them to pay the loan, failing which their factory premises and assets would be taken over. The plaintiffs pleaded that on an understanding between them and Amit Industries, the defaulted loan to the extent of Rs.1,24,227/- was paid. It is also alleged that they were given the possession of the factory and that the defendant had agreed to the change in management of the Industry as aforesaid. The plaintiffs allege that contrary to the assurances held out by the defendants, the Industrial unit was taken over by the respondents and that the commitments made on their behalf having remained

unfulfilled, the plaintiffs were entitled to the amount as claimed for.

The suit was resisted by the defendant on a number of grounds, including the crucial issue of privity of contract. The defendants pleaded that no agreement was entered into between them. They submitted that the decision of the Industry was never given to the plaintiffs but to Shri Lachhman Singh, one of the partners of Amit Industries. Learned trial Court framed seven issues, the most important being regarding the entitlement of the plaintiffs to recover a sum of Rs.1,24,227/- and another amount of Rs.94,000/- as costs of the purported furniture belonging to the plaintiffs illegally seized and retained by the defendants. Two other issues which went to the root of the case were with reference to locus standi of the plaintiffs to have instituted the suit and whether the plaintiff had any cause of action to file the suit. On the first two issues, the learned trial Court, after a detailed consideration of the documents and evidence on record concluded that there was no evidence on record that a sum of Rs.72,000/- as claimed had been paid by the plaintiffs on behalf of Amit Industries and that if all the facts are considered in favour of the

plaintiffs without insisting on proof, the amount paid was towards loan liability of Amit Industries and not for any other bargain as alleged by the plaintiffs. The basis of the suit of the plaintiffs that the payments were made pursuant to an agreement to sell having been entered into with Amit Industries which had allegedly been approved by the defendant, the learned trial Court found as a matter of record that the agreement had never been produced on record and no approval or acquiescence of the defendants was established on the record. The plaintiffs had also failed to establish on record that the future and fixtures purportedly seized by the defendants belonged to them. On the question of locus standi, the Court held that the plaintiffs having failed to establish their actionable interest in the property, no decree could be granted in favour of the plaintiffs.

I have heard the learned counsel for the parties and gone through the record.

In addition to what has been held by the learned trial Court, one crucial fact needs to be noticed, i.e. a letter Ex. P-5 addressed to Amit Industries by the Deputy Manager of the defendants.

The letter contains nine stipulations to the following effect:

"1. That they shall have to submit dissolution deed in respect of old partnership concern.

2. That they shall have to furnish a fresh partnership deed of new partners i.e. of S/Shri Parkash Chand Bansal and Vidya Dutt Sharma.

3. That they shall have to register the new partnership deed with Registrar of firms.

4. That they have to obatain approval from D.I./HP, for the change of management.

5. That the land which is presently in the name of outgoing partners shall have to be transferred in the name of new partners and subsequently mortgaged in the name of the corporation.

6. That the party shall have to give an advertisement in the newspaper regarding the retirement of old partners and induction of new partners and submit a copy to this corporation.

7. That the corporation shall not change the repayment schedule in respect of loan.

8. That the new partners shall have to execute necessary legal documents such as Agreement, Trust Letter, Deed of guarantee etc. for the change of management.

9. That the party shall have to furnish approval from D.I./HP as well as from Registrar of firms regarding change of name of the unit i.e. from M/S Amit Ind to M/S Lalit Enterprises, Nahan."

This letter would assume importance as this was the basis on which consent of the defendants could have been obtained and novation of the agreement with the original loanee established. There is no evidence on record to show that the plaintiffs or any of the persons of Amit Industries had ever complied with these conditions which would entitle them to claim an actionable interest in the subject matter of the suit. Needless to add that no relief can be granted in case evidence is not produced on record. The plaintiff having failed to discharge the onus on him, cannot now be heard in appeal to allege that any decree be granted on the basis of conjectures. The onus was on the plaintiffs. No evidence, much-less cogent evidence, having been brought on record, the appeal filed by the plaintiffs cannot be accepted. It is accordingly dismissed. There shall be no order as to costs.

August 17, 2007. (PC). (Dev Darshan Sud), J.